

THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF APPEALS

#44  
X. Cobb  
7/10/02

In re Application of: )  
S.D. AUGUSTINE ET AL ) Group Art Unit: 3711  
Serial No. 08/855,061 ) Examiner: M. Graham  
Filed: May 13, 1997 ) Docket No.: AUGA01000012  
For: THERMAL BLANKET )

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CERTIFICATION UNDER 37 CFR § 1.8

I hereby certify that the documents referred to as enclosed herein are being deposited with the United States Postal Service as first class mail on this date 28 June 2002, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231

TECHNOLOGY CENTER R3700

28 June 2002  
Date

Tenance A. Dood  
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Sir:

SUPPLEMENTAL REPLY BRIEF

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This is in response to the Examiner's Answer mailed June 7, 2002 that was in response to the "Order Remanding to Examiner" from the Board of Patent Appeals and Interferences. The applicants note that the Examiner's Answer is designated Paper 39, which was the same paper number as the original Examiner's Answer mailed May 22, 2001.

Response to the Argument in the Examiner's Answer

The applicants continue to advance the arguments already made in their Brief on Appeal mailed February 27, 2001 and their Reply Brief mailed July 26, 2001. The following responses are intended to supplement the Brief on Appeal and the Reply Brief with respect to certain specific, identified arguments or statements in the Examiner's Answer.

Claims 20, 22, and 34

The applicants have consistently argued throughout the course of this prosecution that certain elements, limitations and relationships that are positively recited in the claims are missing from Roehr.

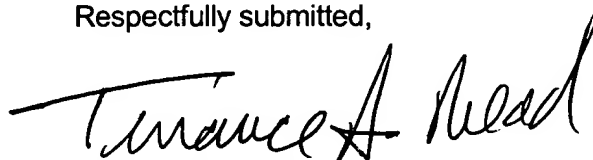
Claims 20, 22, and 34 recite an overlaying sheet attached to the upper surface of the base sheet "to form an inflatable structure", and a "non-inflatable portion" of the inflatable structure near "a head end" of the inflatable cover. These elements, limitations and relationships are absent from Roehr. The only offer of proof that the missing subject matter is inherent in Roehr is the Examiner's statement: "As any laymen will appreciate, when air is pumped into Roehr's device with sufficient pressure it will inflate." (Examiner's Answer, Page 5, last to first line of page 6). In addition to the applicants' prior arguments regarding the failure of Roehr to teach inflatability, it is noted that "sufficient pressure" is the Examiner's term and does not appear in Roehr, or in the specification of this application. It is at best an inexact statement that the Examiner has not defined. It should be accorded no evidentiary weight to prove the property of inflatability, which is altogether absent from the Roehr reference.

It is further asserted that "Roehr provides a pressure relief valve 31 for the blanket. Clearly such a valve would not be necessary if the blanket was not inflatable." (Paper number 14, page 3, lines 1-2). In fact, the presence of a pressure relief valve doesn't suggest inflatability or uninflatability. An air compressor and a hot water heater have pressure relief valves; neither would be considered "inflatable" for having such an element. Nothing in Roehr relates pressure relief to inflatability. Instead, the role of the pressure relief valve seems to be fine tuning the pressure of the expelled airflow. For example, Roehr states that "an even airflow over the individual should be achieved and excess pressure in the space between the cover and the individual's body should be prevented (Roehr at page 1). Additionally: "a safety valve 31 can be provided ... in order to prevent excess pressure from building up in the interior space 13 of the cover 10" (Roehr at page 4, paragraph 5) (emphasis added).

The Examiner also states: "Furthermore, it is again pointed out that the claims only require a blanket capable of inflation. Even if it was Roehr's intention to try the tortuous process of dispersing the air without actually "inflating" the blanket this has no bearing on what the blanket is capable of when sufficient pressure is applied to the blanket" (Examiner's Answer, page 6, lines 3-6) (emphasis in original). In response, the applicants respectfully point out that it is not the circulation of air through a device and the possibility of that device responding to the pressure of the circulating air by deforming that makes the device "inflatable". An air duct carrying a flow of air

in an HVAC system can distend in response to a build up of air pressure beyond some design limit. This does not make the duct "inflatable", nor would one of ordinary skill consider it to be inflatable. Moreover, non "tortuous" means of circulating and delivering air to a human body by non-inflatable covers are known; and reference in this regard is once again given to the Wales patent (US Patent No. 2, 601,189), which is of record in this application. As this Board knows, a term in a claim is to be given its ordinary meaning, absent a different definition or a narrowing characterization by an applicant. In the claims at issue, the term "inflatable" must be given its ordinary meaning, and that limitation must be found explicitly, or by inherency, in Roehr. The term is not found in Roehr; no extrinsic evidence has been introduced by the Examiner that the missing term is necessarily in Roehr, and that it would be so recognized by the reasonably skilled artisan. Accordingly, "inflatability" is not inherent in Roehr, the burden of proving that Roehr teaches "inflatability" has not been met.

Respectfully submitted,

A handwritten signature in black ink, reading "Terrance A. Meador". The signature is fluid and cursive, with the first name "Terrance" and last name "Meador" clearly legible.

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Date: June 28, 2002

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